
United States
Circuit Court of Appeals

For the Ninth Circuit.

LUIGI SAGLIUZZO, CARMINE KRITIANO,
LUIGI COLAMO, MICHEL SAURO and
MIRNI CARBONE,

Libellants and Appellants,

vs.

GASOLINE LAUNCH "I. S. E. 2", her engines,
machinery, boilers, tackle, apparel and furniture,
Respondent,

J. E. FRYMIER, claimant and respondent,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUIGI SAGLIUZZO, CARMINE KRITIANO,
LUIGI COLAMO, MICHEL SAURO and
MIRNI CARBONE,

Libellants and Appellants,

vs.

GASOLINE LAUNCH "I. S. E. 2", her engines,
machinery, boilers, tackle, apparel and furniture,
Respondent,

J. E. FRYMIER, claimant and respondent,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Affidavit of Service.....	33
Amended Libel	13
Assignment of Error.....	24
Bond on Appeal and to Stay Execution.....	28
Claimants Stipulation for Costs.....	36
Claim of J. E. Frymier.....	7
Clerk's Certificate	46
Exceptions to Amended Libel.....	18
Exceptions to Libel.....	9
Interrogatories	6
Libel	3
Memorandum of Costs and Disbursements.....	34
Minutes of the Court.	12
Minutes of the Court.....	21
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	26
Notice of Application to Tax Costs.....	35
Order Dismissing Libel.....	22
Praeipce of Loucks & Phister.....	43
Praeipce of Wilbur Bassett.....	44
Statement of the Clerk.....	2
Stipulation	31
Stipulation for Costs.....	42
Stipulations in Pursuance of Rules and Practice,...	41
Undertaking of Claimant on Stipulation for Release of Libel	38

Names and Addresses of Attorneys.

For Appellants:

LOUCKS and PHISTER, Esqs., Marine Bank
Building, San Pedro, California.

C. W. PENDLETON, Esq., of Counsel, Pacific Mu-
tual Building, Los Angeles, California.

For Respondent:

WILBUR BASSETT, Esq., Van Nuys Building,
Los Angeles, California.

ant's Exceptions to Amended Libel, denying request of defendant for costs, and allowing Libellants ten days to amend, and defendants ten days to except thereto, and that on May 8th, 1926, a final decree was signed filed and entered; that notice of appeal was filed on June 21, 1926, and that this case was heard before the Honorable Paul J. McCormick, one of the United States District Judges of this Court. No reference to a Commissioner was made.

Chas N Williams

Clerk of the United States District Court for the Southern District of California.

IN THE UNITED STATES DISTRICT COURT, IN THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, IN ADMIRALTY.

VINCENT MASCOLA, LUIGI SAG- :
LIUZZO, CARMINE KRITIANO, :
LUIGI COLAMO, MICHEL SAURO : LIBEL 2322 M
AND MIRNI CARBONE, : IN REM AND
Libellants, : IN
VS. : PERSONAM.
GASOLINE LAUNCH "I. S. E. 2" :
and J. E. FRYMIER, :
Respondents. :

Come now the libellants and by way of libel against the gasoline launch "I. S. E. 2", her tackle, apparel, engines, furniture and equipment, and against all persons having or claiming to have any interest in said gasoline launch "I. S. E. 2", and against J. E. Frymier, complain and allege as follows, to-wit:

I.

That the libellants, and each of them, are seamen and seamen fishermen.

II.

That the respondent J. E. Frymier is a resident of the County of Los Angeles, State of California, and libellants are informed and believe, and upon such information and belief allege that he is the owner of the gasoline launch "I. S. E. 2".

III.

That the gasoline launch "I. S. E. 2" is a domestic vessel and is now in the County of Los Angeles, State of California, and within the jurisdiction of this Court.

IV.

That within one year last past, the Master and owners of the said gasoline launch "I. S. E. 2" entered into a contract by and within the libellants herein under and by virtue of which the said respondents agreed to employ and did employ the libellants as seamen and sea-going fishermen and as the crew of the said gasoline launch "I. S. E. 2"; that at said time and ever since, the said respondent gasoline launch was engaged in fishing; that the said Master and owners of said gasoline launch agreed to pay the libellants as and for their services as members of the crew of the said gasoline launch on lays.

V.

That under and pursuant to said contract the libellants served as seamen upon the said vessel and particularly served thereon between the first day of January, 1926, and the 26th day of January, 1926; that during said time the said libellants and the respondent vessel caught certain fish which were sold by the Master of owners of

said vessel for a sum in excess of One thousand five hundred dollars (\$1,500.00).

VI.

That under and by virtue of the said agreement herein before set forth, the said vessel and owners became liable to said libellants as and for wages for their services as seamen upon the said vessel, and as and for their shares or lays of the fish caught and sold by the said vessel in the sum of One thousand five hundred dollars (\$1,500.00); that said sum has not, nor has any part thereof been paid, and the whole thereof now remains wholly due, owing and unpaid from the respondents to the libellants.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said gasoline launch "I. S. E. 2", her tackle, apparel, furniture, engines and equipment, and against the respondent J. E. Frymier; that the Master of said vessel, and any and all persons claiming any right, title or interest in said vessel may be cited to appear and answer under oath all and singular the matters and things aforesaid; that the said vessel may be condemned and sold to pay the amount due to the libellants, with interest, costs and counsel fees, and that said libellants may have and recover judgment of and from the respondent J. E. Frymier the sum of One thousand five hundred dollars (\$1,500.00), and for costs of suit,

and for such other and further relief as to the Court may seem meet and just.

Loucks & Phister

Proctors for Libellants.

INTERROGATORIES

1st. Who is now the owner of the gasoline launch "I. S. E. 2," and how long has he been such owner?

2nd. What interest, if any, did the Pacific Marine Products Company, a Corporation, have in the respondent, "I. S. E. 2," at the time subsequent to the first day of September, 1925?

3rd. Did any person or persons have any charter on the said vessel during the last six months, and if so, what were the terms of such charter, if any, were in effect during said period?

4th. Was any charter, or other agreement, respecting the boat respondent "I. S. E. 2" on file in the Customs office at the Port of Los Angeles, or otherwise?

5th. If the answer to the last interrogatory is in the affirmative, what was the terms of such agreement and was it filed?

STATE OF CALIFORNIA }
County of Los Angeles } ss.

Vincent Mascola being by me first duly sworn, deposes and says: that he is one of the libellants in the above entitled action; that he has read the foregoing *lible* and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Vincent Mascola

Subscribed and sworn to before me this 11 day of March, 1926.

[Seal]

C. Aezer

Notary Public in and for the County of Los Angeles, State of California

[Endorsed]: Original. No. 2322 M. In the United States District Court, Southern District of California, Southern Division Vincent Mascola, et al., libellants, vs. Gasoline Launch, "I. S. E. 2" and J. E. Frymier, respondents. Libel in rem and in personam. Filed Mar. 12, 1926 Chas. N. Williams Clerk by R S Zimmerman deputy clerk. Law offices Loucks & Phister Marine Bank Building San Pedro, California Attorneys for libellants

IN THE UNITED STATES DISTRICT COURT IN THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, IN ADMIRALTY.

VINCENT MASCOLA, et al,)	
)	
Libellants,)	
)	
vs.	)	IN
	)	ADMIRALTY
	)	No. 2322-M.
GASOLINE LAUNCH "I. S. E. 2"	)	CLAIM OF
and J. E. FRYMIER,	)	J. E. FRYMIER
)	
Respondents.)	
)	

And now before this Honorable Court appears J. E. Frymier, and claims the above named Launch "I. S. E. 2" and prays to defend this suit accordingly.

J. E. Frymier

SOUTHERN DISTRICT OF CALIFORNIA)
) ss.
 SOUTHERN DIVISION.)

J. E. FRYMIER, being duly sworn, says: That he is the true and bona fide owner of Gasoline Launch "I. S. E. 2" against which this suit has been commenced by Vincent Mascola, et al, Libellants, and that no other person is the owner thereof; that deponent is duly authorized to put in this claim.

J. E. Frymier

Subscribed to before me this 17th day of March, 1926.

L. P. Mayo

Notary Public in and for the County of Los Angeles,
 State of California.

[Seal]

[Endorsed]: No. 2322-M In Admiralty In the U. S. District Court Southern District of California Southern Division Vincent Mascola, et al, Libellants, vs. Gasoline Launch "I. S. E. 2" and J. E. Frymier, Respondents. Claim of J. E. Frymier Filed Mar 22 1926 Chas. N. Williams, Clerk By L J Cordes Deputy Clerk.

Wilbur Bassett Attorney at Law 432 Van Nuys Building Los Angeles, Cal.

IN THE UNITED STATES DISTRICT COURT IN
THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION, IN
ADMIRALTY

VINCENT MASCOLA, et al)	
)	
Libellants,	)	IN
	)	ADMIRALTY
vs.	)	No. 2322-M.
	)	EXCEPTIONS
GASOLINE LAUNCH "I. S. E. 2"	)	TO LIBEL.
and J. E. FRYMIER,)	
)	
Respondents.)	

The exception of J. E. Frymier, Claimant, to the libel and complaint of Vincent Mascola, and others, against the said Gasoline Launch "I. S. E. 2" and J. E. Frymier alleges that the said libel is insufficient in the following particulars, and excepts and objects to the said libel and for cause of exception alleges:

I.

That it cannot be ascertained therefrom with what master or with what owners said purported contract alleged in paragraph 4 thereof was made or whether the said master or the said owners had an interest therein by way of lay or otherwise, or whether the said purported master is one of said libellants.

II.

That it cannot be ascertained therefrom by whom certain fish referred to in paragraph 5 thereof were sold or what sum was obtained therefor.

III.

That it does not appear therefrom that any accounting has ever been had or demanded of any proceeds of said alleged sale.

IV.

That the said libel shows that this court has no jurisdiction of the claims of said libellants in that it appears that no accounting of the said proceeds or the value of said lays has been had.

V.

That it does not appear therefrom that each or any of said libellants had a commercial fishing license as required by the laws of California.

VI.

That it cannot be ascertained therefrom what amount, if any, is or might become due or payable to any of said libellants thereunder.

VII.

That it cannot be ascertained therefrom wherein or whereby said Launch, "I. S. E. 2", is liable in rem for any amount.

VIII.

That it cannot be ascertained therefrom wherein or whereby the said J. E. Frymier is liable in per sonam in any amount.

WHEREFORE, respondent and claimant prays that the libel may be dismissed with costs.

Wilbur Bassett
Bertin A. Weyl
Proctors for Claimant.

At a stated term, to wit: The January Term, A. D. 1926 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 29th day of March in the year of our Lord one thousand nine hundred and twenty-six.

Present:

The Honorable Paul J. McCormick, District Judge.

Vicent Mascola, et al., libellant,)	
)	
vs.	)	No. 2322-M. Adm.
)	
Gasoline Launch "I.S.E. 2", et al.,)	
Respondent.)	

This cause coming before the court for hearing on motion of Libellants for hearing on Exceptions; Proctor Phister of Messrs. Loucks & Phister, appearing for the libellants, and Wilbur Bassett, Esq., appearing for the Respondents, said Wilbur Bassett, Esq., presents exceptions and Mr. Phister having replied and Wilbur Bassett, Esq., having argued in rebuttal, the Court sustains exceptions 1 and 2 and overrules Specification of Objections 3rd, 4th and 5th, and sustains specification of objections 6th, 7th and 8th, and an exception having been noted at the request of the respondent for failure to sustain their exceptions Nos. 3 and 4, it is by the Court ordered that the libellants have twenty days to amend Bill.

IN THE DISTRICT COURT OF THE UNITED STATES, IN THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION: IN ADMIRALTY.

VINCENT MASCOLA, LUI- :
GI SAGLIUZZO, CARMINE :
KRITIANO, LUIGI COLA- :
MO, MICHEL SAURO AND :
MIRNI CARBONE, :

Libellants, :

vs. :

AMENDED LIBEL.
2322-M

GASOLINE LAUNCH "I. S. :
E. 2" AND J. E. FRYMIER, :

Respondents. :

Come now the libellants and by way of libel against the gasoline launch, "I. S. E. 2", her tackle, apparel, engines, furniture and equipment, and against all persons having or claiming to have any interest in or to said launch, and against J. E. Frymier, the owner thereof and for a cause of action, civil and maritime, against the said respondents, complains and alleges as follows, to-wit:

I.

That the libellants are and at all times herein mentioned have been seamen and seamen fishermen residing within the City of Los Angeles, County of Los Angeles, State of California, and within the jurisdiction of the above entitled Court; that each of said libellants have been duly and regularly licensed as fishermen by the Fish and Game Commission of the State of California,

under and pursuant to the laws of the State of California, and are duly and regularly licensed under and pursuant to the laws of the State of California and of the United States of America, as seamen and seamen fishermen.

II.

That libellants are informed and believe, and upon such information and belief, allege that the respondent, J. E. Frymier is a resident of the County of Los Angeles, State of California, and is the owner of the gasoline launch "I. S. E. 2".

III.

That the gasoline launch is and was at all times herein mentioned, a domestic vessel and was at the time of filing of libel herein and is now within the County of Los Angeles, State of California, and within the jurisdiction of this Court.

IV.

That during the month of November, 1925, the respondent, J. E. Frymier, employed the libellant, Vincent Mascola, as master of the gasoline launch "I. S. E. 2", and agreed to pay the said Vincent Mascola as and for his services as such master, one-sixth (1/6) of the proceeds received from the sale of any and all fish caught by the said "I. S. E. 2" during the time he acted as master thereof.

V.

That thereafter and during the month of November, 1925, the said Vincent Mascola, master of the said "I. S. E. 2", employed the libellants, Luigi Sagliuzzo, Carmine Kritiano, Luigi Colamo, Michel Sauro and Mirni Carbone, as members of the crew of the said

vessel, and agreed to pay them for their services as members of the crew on lays, that is to say, the said master agreed to pay to each of said libellants one-sixth (1/6) part of the net proceeds received from the sale of any and all fish caught by the said vessel during the time the said libellants served thereon as seamen.

VI.

That immediately thereafter and particularly between the 1st day of January, 1926, and the 26th day of January, 1926, the said libellants served upon the said vessel as master and members of the crew thereof, and engaged in fishing operations in the waters of the Pacific Ocean, adjacent to the Port of Los Angeles.

VII.

That during the said time, the said libellants and the respondent vessel caught a large amount of fish; that libellants are informed and believe, and upon such information and belief, allege that the number of tons of fish caught by said vessel during said time was two hundred (200), and that the master of said vessel sold the said fish for the sum of ten (\$10) dollars per ton, and received therefor two thousand (\$2,000) dollars.

VIII.

That libellants are informed and believe and upon such information and belief allege, that the net amount received for said fish after paying all the expenses of operation, was the sum of fifteen hundred (\$1500) dollars; that under and by virtue of the provisions of the agreement wherein and whereby the said libellants were employed as members of the crew of said vessel, there thereupon became due to each of the said libellants the sum of two hundred fifty (\$250.00) dollars, as and for

their wages as crew of said vessel; that said sum has not, *now* has any part thereof been paid to the libellants, or either of them, and the whole thereof now remains due, owing and unpaid from the respondents to the libellants.

IX.

That the respondent, "I. S. E. 2" is a sea-going fishing vessel of approximately ten (10) tons dead weight.

X.

That all and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, libellants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said gasoline launch, "I. S. E. 2", her tackle, apparel, furniture, engines and equipment, and against the respondent J. E. Frymier; that the owner of the said vessel and any and all persons claiming any right, title or interest therein, may be cited to appear and answer under oath all and singular the matters and things aforesaid; that the said vessel may be condemned and sold to pay the amount due to the libellants, with interest, costs and counsel fees; and that said libellants may have and recover, of and from the respondent, J. E. Frymier, as follows:

Libellant, Vincent Mascola,	\$250.00
Libellant, Luigi Sagliuzzo,	250.00
Libellant, Carmine Kritiano,	250.00
Libellant, Luigi Colamo,	250.00
Libellant, Michel Sauro,	250.00
Libellant, Mirni Carbone,	250.00

and for costs of suit and for such other and further relief as to the Court may seem meet and just.

Loucks & Phister
Attorneys for Libellants.

STATE OF CALIFORNIA, }
County of Los Angeles } ss.

Luigi Sagliuzzo, being by me first duly sworn, deposes and says: that he is one of the Libellants in the above-entitled action; that he has heard read the foregoing Amended Libel and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Luigi Sagliuzzo

Subscribed and sworn to before me this 7 day of April 1926.

[Seal]

C. Aezer

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No 2322-M. In the United States District Court, Southern District of California, Southern Division Vincent Mascola, Luigi Sagliuzzo, Carmine Kritiano, Luigi Colamo, Michel Sauro, & Mirni Carbone, libellants, vs. Gasoline launch "I. S. E. 2" and J. E. Frymier, respondents. Amended Libel. Received copy of the within Amd. libel this 13 day of April 1926. Wilbur Bassett, attorney for claimant Filed Apr. 17, 1926 Chas. N. Williams, clerk by R. S. Zimmerman deputy clerk. Law ffices, Loucks & Phister, Marine Bank Building San Pedro, California, attorneys for libellants.

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN DIVISION ·
IN ADMIRALTY

VINCENT MASCOLA, et al,)	
)	
Libellants,)	
)	
vs.	)	No. 2322-M
)	
GASOLINE LAUNCH	)	EXCEPTIONS TO
"I. S. E. 2" and J. E. FRY-	)	AMENDED LIBEL
MIER,)	
Respondents.)	
)	

The exceptions of J. E. Frymier, claimant, to amended libel of Vincent Mascola and others against the said Gasoline Launch "I. S. E. 2" and J. A. Frymier excepts and objects to the said libel and alleges that the said libel is insufficient in the following particulars, to-wit:

I.

That it cannot be ascertained therefrom whether the alleged licenses as fishermen under the laws of the State of California were in force during said month of January, 1926, or whether the said alleged licenses as seamen and seaman fishermen under the laws of the United States were in effect during the said month of January, 1926.

II.

That it cannot be ascertained therefrom for what term or period the said Mascola was employed as master or upon what terms or by whom said fish were to

be sold or to whom the gross proceeds thereof were to be delivered or whether said one-sixth part should be calculated upon gross or net proceeds or how said proceeds should be ascertained or to whom the remaining five-sixths of said proceeds was payable.

III.

That it cannot be ascertained therefrom whether said agreement alleged in paragraph 4 was in writing or oral.

IV.

That it cannot be ascertained therefrom whether said agreement alleged in paragraph 5 was in writing or oral.

V.

That it cannot be ascertained whether the said alleged master made the agreement referred to in paragraph 5 of said libel on his own behalf and responsibility or on behalf of said vessel or by what authority the same was made.

VI.

That it cannot be ascertained therefrom how the net proceeds alleged in paragraph 5 of said amended libel could be arrived at.

VII.

That it cannot be ascertained therefrom what sum, if any, was obtained by the said master upon the sale of fish or how the net proceeds thereof can be ascertained.

VIII.

That it does not appear therefrom that any accounting has ever been had or demanded of any proceeds of said alleged sale, or that any accounting thereof is tendered.

IX.

That the said libel shows that this court has no jurisdiction of the claims of said libellants in that it appears that no accounting of the said proceeds or the value of said lays has been had.

X.

That it cannot be ascertained therefrom wherein or whereby said Launch "ISE 2" is liable in rem for any amount.

XI.

That it cannot be ascertained therefrom wherein or whereby the said J. E. Frymier is liable in personam in any amount to any of said libellants.

XII.

That it cannot be ascertained therefrom wherein said vessel is liable in rem to said Vincent Mascola in any amount.

XIII.

That it cannot be ascertained therefrom wherein the said J. E. Frymier is liable in personam to the said Vincent Mascola in any amount.

XIV.

That said libel does not show any joint right in said libellants and the several rights if any claimed by said libellants are not separately or specifically or by distinct articles pleaded in said amended libel.

XV.

That said amended libel is not duly verified as to said separate claims.

WHEREFORE, respondents and claimants pray that the said exceptions may be sustained and allowed and the said amended libel dismissed with costs.

Wilbur Bassett

Bertin A. Weyl

Proctors for Claimant.

[Endorsed]: No. 2322-M Admiralty In the U. S. District Court Southern District of California Southern Division Vincent Mascola, et al Libellants vs. Gasoline Launch "I. S. E. 2" and J. E. Frymier, Respondents. Exceptions to Amended Libel. Filed Apr 19 1926 Chas. N. Williams, Clerk By L. J. Cordes Deputy Clerk. Wilbur Bassett Attorney at Law 432 Van Nuys Building Los Angeles, Cal. Attorney for Respondents.



At a stated term, to wit: The January Term, A. D. 1926 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 26th day of April in the year of our Lord one thousand nine hundred and twenty-six.

Present:

The Honorable Paul J. McCormick, District Judge.

Vincent Mascola, et al.,	Libellants,)	
)	
	vs.	)	No. 2322-M Civ.
)	
Gasoline Launch "I. S. E. 2", et al.,)	
	Respondents.)	

This cause coming before the Court for hearing on exceptions to Amended Libel; Attorney Phister of Messrs. Loucks & Phister, appearing as counsel for the

libellants and Attorney Bassett, Esq., appearing as counsel for the respondents; at the hour of two o'clock p. m., Attorney Wilbur Bassett, Esq., presents exceptions to amended Libel, and Attorney Phister having argued in opposition to said exceptions, it is by the court ordered that said exceptions be sustained, and Attorney Wilbur Bassett, Esq., having asked for costs, it is by the Court ordered that said request be denied; and it is further ordered that libellants have ten days to amend with the understanding that this will be the last time, and that within ten days after service of said amended Libel, the respondent may except thereto if they so desire.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

VINCENT MASCOLA, et al,)		
Libellants,)		No. 2322-M
vs.)		
GASOLINE LAUNCH)		ORDER DISMISSING
"I. S. E. 2", et al,)		LIBEL.
Respondents.)		

It appearing to the Court that heretofore on the 26th day of April, 1926, Libellant herein was granted leave to file, within ten days thereafter, a second amended libel, and that said ten days have passed and said

amendment has not been filed, and that the libellant has not appeared and prosecuted his suit and complied with the orders of the court in that behalf, and that said libellant is in default and contumacy.

Now, upon application of Wilbur Bassett, Esq., Proctor for claimant, it is pronounced that the said cause is deserted and it is hereby ORDERED that said libel be dismissed and that claimant recover his costs to be taxes herein, and that the said Vessel "I. S. E. 2" be discharged and released from the lien of said libel and that the sureties upon the stipulation upon release of said vessel be released and discharged.

Costs taxed at \$63.50

Paul J. McCormick

Judge.

Dated May 8th—1926 at 12 M.

Decree entered and recorded 5/8/26

CHAS. N. WILLIAMS, Clerk,

By Louis J. Somers

Deputy Clerk.

[Endorsed]: 2322 M Vincent Mascola et al v. Gasoline Launch I. S. E. 2 Order dismissing Libel Filed May 8th 1926 Chas. N. Williams, Clerk By Louis J Somers Deputy Law Office of Wilbur Bassett 432 Van Nuys Building Los Angeles.

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT
OF CALIFORNIA. SOUTHERN DIVI-
SION: IN ADMIRALTY.

LUIGI SAGLIUZZO, CARMINE	:	
KRITIANO, LUIGI COLAMO,	:	
MICHEL SAURO AND MIRNI	:	
CARBONE,	:	
	:	
Libellants and Appellants	:	ASSIGNMENT
	:	OF ERROR
vs.	:	ON APPEAL.
	:	
GASOLINE LAUNCH "I. S. E. 2",	:	
and J. E. FRYMIER,	:	
	:	
	:	
Respondents.	:	

The libellants and appellants herein hereby assign error to the Decree of the District Court of the United States, for the Southern District of California, in the above entitled cause, in the following particulars, to-wit:

I.

In that the Court erred in sustaining the Exceptions filed by the respondents, J. E. Frymier and J. E. Frymier as claimant to the Gasoline Launch "I. S. E. 2", to the original Libel filed herein.

II.

In that the Court erred in sustaining the Exceptions filed by the respondents, J. E. Frymier and J. E. Frymier as claimant to the Gasoline Launch "I. S. E. 2", to the first amended Libel filed herein.

III.

That the Court erred in dismissing the Libel herein.

IV.

In that the Court erred in not requiring the respondents to answer to the original Libel on file herein.

V.

In that the Court erred in not requiring the respondents to answer the Amended Libel on file herein.

Dated this 21st day of June, 1926.

Loucks & Phister

Proctors for Libellants and Appellants.

C. W. Pendleton

Of Counsel

[Endorsed]: Original. No. 2322-M. In the United States District Court, Southern District of California Southern Division Luigi Sagliuzzo, et al, libellants and appellants vs. Gasoline launch "I. S. E. 2" and J. E. Frymier, respondents. Assignment of error on appeal. Filed Jun 21, 1926. Chas. N. Williams Clerk By L. J. Cordes Deputy Clerk. Law offices Loucks & Phister Marine Bank Building, San Pedro, California Attorneys for libellants.

IN THE UNITED STATES DISTRICT COURT IN
 THE SOUTHERN DISTRICT OF CALI-
 FORNIA SOUTHERN DIVISION:
 IN ADMIRALTY.

VINCENT MASCOLA, et al,	:	
	:	
	:	
Libellants.	:	
	:	No. 2322-M
vs.	:	
	:	
	:	NOTICE OF
GASOLINE LAUNCH "I. S. E. 2"	:	APPEAL
and J. E. FRYMIER,	:	
	:	
	:	
Respondents	:	

To the respondents, "I. S. E. 2" and J. E. Frymier, and to Wilber Bassett, and Burton A. Weyl, their attorneys, and to Charles N. Williams, Esq., Clerk of the District Court of the United States, in and for the Southern District of California, Southern Division:

You, and each of you, will please take notice that the libellants, Luigi Sagliuzzo, Carmine Kritiano, Luigi Colamo, Michel Sauro and Mirni Carbone, hereby appeal from the final decree made and entered herein on the 8th day of May, 1926, and from the whole thereof, to the next term of Court of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in and for the said Circuit at the City of San Francisco, in the Northern District of California.

Dated this 14th day of June, 1926.

Loucks & Phister

Proctors for Libellants.

STATE OF CALIFORNIA,	}	AFFIDAVIT
COUNTY OF LOS ANGELES		

Verlynn Stewart, being first duly sworn, deposes and says:

That she is and was at all times herein mentioned, a citizen of the United States, over the age of eighteen years, and not a party to the within titled action; that she served the attached Notice of Appeal upon Wilbur E. Bassett, one of the attorneys for the Respondent therein, by delivering to and leaving with said Wilbur E. Bassett, personally, a true and correct copy of the said Notice of Appeal, at the office of the said Wilbur E. Bassett #217 Van Nuys Bldg., in the City of Los Angeles, County of Los Angeles, State of California, on the 14th day of June, 1926, at the hour of 3 o'clock P. M. of said day.

Dated this 14th day of June, 1926.

Verlynn Stewart

Subscribed and sworn to before me this 21st day of June, 1926.

[Seal]

Gertrude Glidden

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Original. No. 2322-M. In the United States District Court, Southern District of California Southern Division Vincent Mascola et al, libellants vs. Gasoline launch "I. S. E. 2" and J. E. Frymier, respondents. Notice of appeal. Filed Jun 21,1926. Chas. N. Williams, Clerk By R. S. Zimmerman Deputy Clerk. Law offices Loucks & Phister Marine Bank Building, San Pedro, California Attorneys for libellants.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

VINCENT MASCOLA, et al,	:	No. 2322-M
	:	
Libellants,	:	
	:	
VS.	:	BOND ON APPEAL
	:	AND TO STAY
GASOLINE LAUNCH	:	EXECUTION.
"I. S. E. #2", et al,	:	
	:	
Respondents.	:	

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Wm J. Maggio is held and firmly bound unto J. E. Frymier in the sum of Two hundred and fifty dollars (\$250.00), for the payment of which said sum well and truly to be made, the undersigned acknowledges himself to be bound.

The condition of the above obligation is such that whereas Luigi Sagliuzzo, Carmine Kritiano, Luigi Colamo, Michel Sauro and Mirni Carbone have appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the Decree of the District Court of the United States for the Southern District of California, Southern Division, bearing date of May 8th, 1926, rendered in the above entitled cause in which the said Luigi Sagliuzzo, Carmine Kritiano, Luigi Colamo, Michel Sauro and Mirni Carbone are libellants against

the said gasoline launch "I. S. E. #2" and J. E. Frymier, and in which the said J. E. Frymier is the claimant of the said respondent, gasoline launch "I. S. E. #2".

NOW, THEREFORE, if the above named appellants shall prosecute their said appeal to effect, and answer all demands and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect, and

WHEREFORE, the said appellants desire, during the process of such appeal, to stay the execution of said Decree of the District Court.

NOW, THEREFORE, the undersigned does hereby acknowledge himself held and firmly bound unto the said J. E. Frymier his heirs, executors administrators and assigns, in the further sum of One hundred thirty dollars (\$130.00), for the payment of which sum well and truly to be made, he acknowledges himself justly bound.

The condition of said obligation is such that if the above named appellants shall abide by and perform whatever decree may be rendered in this cause by the Circuit Court of Appeals for the Ninth Circuit, or on the mandate of said Circuit Court of Appeals by the court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated this 18th day of June, 1926.

Wm J. Maggio

STATE OF CALIFORNIA :
 : SS.
COUNTY OF LOS ANGELES :

On this 18th day of June, 1926 before me C. Aezer a Notary Public in and for the County of Los Angeles,

State of California, duly commissioned and sworn, personally appeared.....known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

C. Aezer

Notary Public in and for the County of Los Angeles, State of California.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

Wm J. Maggio, being first duly sworn on his oath. deposes and says:

That he is worth the sum of Eight hundred dollars (\$800.00) over and above all his just debts and obligations.

Wm J. Maggio

Subscribed and sworn to before me this 18th day of June, 1926.

[Seal]

C. Aezer

Notary Public in and for the County of Los Angeles, State of California.

Examined and recommended for approval as provided for in Rule 29.

Loucks & Phister

Proctors for Appellants

C. W. Pendleton

of Counsel.

I hereby approve the foregoing bond.

Dated this 21st day of June, 1926.

Paul J. McCormick

Judge

[Endorsed]: Original. No. 2322-M. In the United States District Court, Southern District of California, Southern Division. Vincent Mascola, et al., libellants, vs. Gasoline Launch "I. S. E. #2", et al., respondents. Bond on appeal and to stay execution. Filed Jun 21, 1926 Chas. N. Williams, Clerk By R S Zimmerman Deputy Clerk Law offices Loucks & Phister, Marine Bank Building, San Pedro, California. Attorneys for Appellants.

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, IN ADMIRALTY.

VINCENT MASCOLA, et al.,)
Libellants) IN ADMIRALTY
vs.) No. 2322-M
GASOLINE LAUNCH) STIPULATION.
"I. S. E. 2" and J. E. FRYMIER,)
Respondents)

WHEREAS, a libel was filed in this Court on the 12th day of March, 1926, by Vincent Mascola, et al, Libellants against the Gasoline Launch "I. S. E. 2", her engines, boilers, tackle, apparel and furniture, Respondent, for a certain claim amounting to \$1500.00; and

WHEREAS, J. E. Frymier owner of the said launch "I. S. E. 2" is about to file his claim in said cause as owner, and a stipulation in the sum of \$2000.00 for the release of said vessel, executed by any surety company authorized in California, as Surety, all pursuant to the rules and practices of the said Court;

NOW, THEREFORE, it is hereby stipulated by and between the undersigned Proctors for the Libellant and for the Respondent and Claimant that said stipulation in the sum of \$2000.00 executed by any surety company authorized in Calif. is sufficient for the release of said launch "I. S. E. 2", and that no other bond need be filed for such purpose

Dated: 3/19/26, 1926

Loucks & Phister

By Montgomery Phister

Proctors for Libellant

Wilbur Bassett

Bertin A Weyl

Proctors for claimant

[Endorsed]: No. 2322-M In the U. S. District Court Southern District of California. Vincent Mascola et al Libellants vs. Gasoline Launch "I. S. E. 2" and J. E. Frymier, Respondents Stipulation Filed Mar 25, 1926 Chas. N. Williams Clerk By L. J. Cordes Deputy Clerk Wilbur Bassett Attorney at Law 432 Van Nuys Building Los Angeles.

herein, as failure to file Amended Libel within the time allowed by Court was entirely the fault of himself, the said Phister. Whereupon affiant replied that he could not make any such stipulation without the consent of his client.

Wilbur Bassett.

Subscribed and sworn to before me this 11th day of May, 1926.

[Seal]

Horace E. Vedder

Notary Public in and for the County of Los Angeles, State of California.

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT MASCOLA, et al

Libellants,

vs.

GASOLINE LAUNCH

"I. S. E. 2 et al

Respondents

} Memorandum of Costs
and Disbursements

DISBURSEMENTS.

Marshal's Fees \$
 Clerk's Fees (to be inserted by clerk)..... \$10 —
 Witness' Fees \$

Premium paid Fidelity & Deposit Co. of Maryland as surety on Stipulations for Costs and upon release of vessel—.....	\$30.00
Horace E. Vedder, notary fees—.....	\$ 1.50
Service of Exceptions & Cost Bill.....	\$ 2.00
Docket Fees	\$20.00
	63.50

United States of America,
SOUTHERN DISTRICT OF CALIFORNIA. } SS:
CITY OF LOS ANGELES. }

WILBUR BASSETT being duly sworn, deposes and says: That he is the Attorney for the claimant and respondent in the above-entitled cause, and as such is better informed, relative to the above costs and disbursements, than the said claimant and respondent That the items in the above Memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

Wilbur Bassett

Subscribed and sworn to before me, this 11 day of May, A. D. 1926

[Seal]

Horace E. Vedder

Notary Public in and for the County of
Los Angeles, State of California

To the Libellants, and Messrs. Loucks & Phister, their
Proctor

You will please take notice that on Friday the fourteenth day of May, A. D. 1926, at the hour of 10:30 o'clock A. M., respondent will apply to the Clerk of said

Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

Wilbur Bassett

Proctor for Respondent

[Endorsed]: No. 2322-M U. S. District Court Southern District of California Vincent Mascola, et al Libellants vs. Gasoline Launch "I. S. E. 2", et al Respondents Memorandum of Costs and Disbursements Filed May 12 1926 Chas. N. Williams, Clerk By L. J. Cordes Deputy Clerk

IN THE UNITED STATES DISTRICT COURT IN
THE SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION,
IN ADMIRALTY.

VINCENT MASCOLA, LUIGI)	3342541
SAGLIUZZO, CARMINE KRIT-)
IANO, LUIGI COLAMO,)	IN ADMIRALTY
MICHEL SAURO AND MIRNI)	
CARBONE,)	No. 2322-M
Libellants,)	
vs.)	CLAIMANT'S
GASOLINE LAUNCH "I. S.)	STIPULATION
E. 2" and J. E. FRYMIER,)	FOR COSTS.
Respondents.)	

WHEREAS, a libel was heretofore filed in this Court by Vincent Mascola, et al., libellants, against Gasoline Launch "I. S. E. 2", her engines, machinery, boilers, tackel, apparel and furniture, for the reason and causes in the said libel mentioned, and

WHEREAS, a claim has been filed in the said cause, or is about to be filed in the said cause, by J. E. Frymier,

scribed the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent, respectively.

(SEAL)

T. E. Seaton

Notary Public in and for the State of California,
County of Los Angeles.

[Endorsed]: No. 2322-M. In Admiralty. In the U. S. District Court, in the Southern District of California, Southern Division. Vincent Mascola, et al., Libellants. vs. Gasoline Launch "I. S. E. 2" and J. E. Frymier, Respondents. Claimant's Stipulation for Costs. Filed Mar 22, 1926, Chas. N. Williams, Clerk, by L. J. Cordes, Deputy Clerk. Wilbur Bassett, Attorney at Law, 432 Van Nuys Building, Los Angeles, Cal.

IN THE UNITED STATES DISTRICT COURT, IN
THE SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

VINCENT MASCOLA, LUIGI)	3342540
SAGLIUZZO, CARMINE KRIT-)	
IANO, LUIGI COLAMO,)	IN ADMIRALTY.
MICHEL SAURO AND MIRNI)	
CARBONE,)	No. 2322-M.
Libellants,)	
vs.)	UNDERTAKING
)	OF CLAIMANT
GASOLINE LAUNCH "I. S.)	ON STIPULA-
E. 2" and J. E. FRYMIER,)	TION FOR
)	RELEASE OF
Respondents.)	LIBEL.

KNOW ALL MEN BY THESE PRESENTS, That

WHEREAS, a libel was filed in this Court on the 12th day of March, 1926, by Vincent Mascola, et al, Libellants, against Gasoline Launch "I. S. E. 2", her engines,

boilers, tackle, apparel and furniture, Respondent, for a certain claim amounting to \$1500.00; and

WHEREAS, J. E. Frymier, owner of the said launch "I. S. E. 2" is about to file his claim in said cause as owner, and a stipulation in the sum of \$2,000 for the release of said vessel;

NOW THEREFORE, the conditions of this obligation are such that if the Respondent herein and FIDELITY & DEPOSIT COMPANY OF MARYLAND shall abide by all orders of this Court, Interlocutory or final, and pay the amount awarded by the final decree of this court, or by any appellate court of an appeal intervene, with interest, not exceeding \$2,000.00, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and dated this 18th day of March, 1926.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

By W. M. Walker,

Attorney-in-Fact.

By S. M. Smith,

Agent.

(SEAL)

STATE OF CALIFORNIA)
) ss.
 County of Los Angeles)

On this 18th day of March, 1926, before me T. E. Seaton, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. M. Walker and S. M. Smith known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland and acknowledged to me that they subscribe the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent, respectively.

T. E. Seaton

(SEAL) Notary Public in and for the State of California, County of Los Angeles.

[Endorsed]: No. 2322-M. In Admiralty. In the U. S. District Court, in the Southern District of California, Southern Division. Vincent Mascola, et al., Libellants, vs. Galsoline Launch "I. S. E. 2" and J. E. Frymier, Respondents. Undertaking of Claimant on Stipulation for Release of Libel. Filed Mar 25, 1926. Chas. N. Williams, Clerk. By L. J. Cordes, Deputy Clerk. Wilbur Bassett, Attorney at Law, 432 Van Nuys Building, Los Angeles, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, IN ADMIRALTY.

VINCENT MASCOLA, LUIGI :		
SAGLIUZZO, CARMINE KRI-		
TIANO, LUIGI COLAMO, MI-		
CHEL SAURO AND MIRNI :	STIPULATION	
CARBONE,	:	
	Libellants,	FOR
VS.	:	
	:	COSTS.
GASOLINE LAUNCH "I. S. E. :		
2" and J. E. FRYMIER,	:	
	:	
	Respondents.	:
	:	



STIPULATION ENTERED INTO IN PURSUANCE TO THE RULES AND PRACTICE OF THIS COURT.

WHEREAS, leave of Court first having been had and obtained, the above named Vincent Mascola, Luigi Sagliuzzo, Carmine Kritiano, Luigi Colamo, Michel Sauro and Mirni Carbone, as libellants, have filed in the above entitled action a libel for the reasons and causes therein mentioned, and the said libellants and William J. Maggio by occupation, Manager Ship Chandlery, residing at and within the City and County of Los Angeles, State of California, hereby declares that in case of default or contumacy on the part of the libellant, execution for the sum of Two Hundred Fifty Dollars (\$250.00) may be issued against the party hereto, his goods, chattels and wares.

NOW, THEREFORE, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulator ensuing is hereby bound in the sum of Two Hundred fifty dollars (\$250.) conditioned that the libellants above named shall pay all costs and expenses which shall be awarded against them by the final Decree of this Court, or upon appeal by the Appellate Court.

Vincent Mascola
Wm. Maggio

UNITED STATES OF AMERICA, :
DISTRICT OF SOUTHERN : SS.
CALIFORNIA. :

Wm. J. Maggio surety and party to the above stipulation being duly sworn deposes and says:

That he resides as above stated, and that he is worth the sum of Five hundred dollars (\$500.00) over and above all his just debts and liabilities.

Wm. Maggio

Subscribed and Sworn to before me this 11th day of March, 1926.

C. Aezer

Notary Public in and for the County of
Los Angeles, State of California.

(SEAL)

Examined and recommended for approval as provided in Rule 29.

LOUCKS & PHISTER

Attorney.

[Endorsed]: Original. No. 2322 M. In the United States District Court, Southern District of California, Southern Division. Vincent Mascola, et al., Libellants, vs. Gasoline Launch "I. S. E. 2" and J. E. Frymier, Respondents. Stipulation for Costs. Filed Mar. 12, 1926. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Law Offices, Loucks & Phister, Marine Bank Building, San Pedro, California. Attorneys for Libellants.

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT MASCOLA et al.	)	Clerk's Office
)	
vs.	)	No. 2322-M
)	
GASOLINE LAUNCH "I. S. E. #2, et al.	)	Praecipe

TO THE CLERK OF SAID COURT:

Sir:

Please issue for Apostles on Appeal in the above matter the following:

The Libel, Exceptions to the Libel, Order Sustaining exceptions to Libel, Amended Libel, Exceptions to Amended Libel, Order Sustaining Exceptions to Amended Libel, Decree of Court, Assignments of error

Claimants undertaking for costs

Stipulation fixing amount of bond on release

Undertaking of claimant on stipulation for release

Exceptions to libel.

Order sustaining exceptions to libel

Amended libel

Exceptions to amended libel

Order sustaining exceptions to amended libel

Decree

Cost Bill and Affidavit of service thereof

Notice of appeal

Assignment of errors

Stipulation for costs on appeal and stay

Praeipce of Appellant—Praeipce of respondent.

Wilbur Bassett

Proctor for Respondent

[Endorsed]: Original 2322 M U. S. District Court
Southern District of California Vincent Mascola et al
vs. Gas Launch "I. S. E. No. 2 et al Praeipce for. . . .
Filed Jun 25 1926 Chas. N. Williams, Clerk By L J
Cordes Deputy Clerk Received copy of the within
Praeipce this 23rd day of June, 1926. Loucks-Phister
KWM. Atty. for Appellant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT
OF CALIFORNIA. SOUTHERN DIVI-
SION: IN ADMIRALTY.

LUIGI SAGLIUZZO, CARMINE	:	
KRITIANO, LUIGI COLAMO,	:	
MICHEL SAURO AND MIRNI	:	
CARBONE,	:	
	:	
Libellants and Appellants	:	CLERK'S
	:	
vs.	:	CERTIFICATE.
	:	
GASOLINE LAUNCH "I. S. E. 2",	:	
and J. E. FRYMIER,	:	
	:	
	:	
Respondents.	:	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 45 pages, numbered from 1 to 45 inclusive, to be the Apostles on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the statement of the clerk, libel in rem and in personam, claim of J. E. Frymier, exceptions to libel, order sustaining exceptions to libel, amended libel, exceptions to amended libel, order sustaining exceptions to amended libel, order dismissing libel, assignment of errors, notice of appeal, bond on appeal to stay execution, stipulation, memorandum of costs and disbursements, claimant's stipulation for costs, undertaking

of claimant on stipulation for release of libel, stipulation for costs, and praecipes.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, thisday of August in the year of Our Lord One Thousand Nine Hundred and Twenty-six, and of our Independence the One Hundred and Fifty-first.

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.

